SUPREME COURT, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2000

IN RE: ESTATE OF EDDIE THOMPSON,
SR, DECEASED
STATE EX REL, EDDIE THOMPSON, JR

PETITIONER/
RELATOR

VS

HON. MARICA J MENGEL,
CLERK, ET AL

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

Eddie J. Thompson, Jr, Pro Se
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QUESTIONS PRESENTED

1. Did the OSC commit plain error in granting Ms Mengel's motion to dismiss complaint in mandamus (Ex E App 5a; where Ms Mengel, in the absence of instructions from the Court, refused to accept for filing papers presented (G, H, App 7a, 8a) that were neither scurrilous nor obscene, were properly prepared and accompanied by the requisite filing fee?

2. Was the Respondent in default as to answer on 3/21/00, where petitioner served complaint on Ms Mengel on 2/28/00? (Ex A, App 1 A), S. Ct, Prac. R. X, Sec 5

3. Was petitioner denied due process of law as guaranteed by the 5th and 14th Amends to the U.S. Const.; when Ms Mengel's office denied petitioner an opportunity to invoke discretion of the OSC? (Ex E - H, App 5a - 8a), S Ct Prac R XI, Sec 2

4. Did HCPC enter a final appealable order on issue of: 1) Ms Alberta's appointment without notice to decedent's next of kin; 2) whether or not Ms Alberta was incompetent; 3) whether or not estate assets were being concealed and embezzled; 4) decedent's domicile? (920479, NR 5)

5. Whether the provisions of ORC 2113.06, are jurisdictional and mandatory, thus requiring the Probate Court to appoint an administrator of an estate from the preferred class described in this statute, or whether the court may exercise its discretion in making the appointment?

OTHER PARTIES

Respondent Honorable Marcia J. Mengel (hereinafter Ms Mengel) failed to serve complaint and summons on Respondents, Mr. George W. Bunyan, Jr. (hereinafter Mr Bunyan) and Mr. Alvertis Bishop, Jr. (hereinafter Mr Bishop).

Honorable Betty D. Montgomery, Attorney General (hereinafter Ms. Montgomery) and Honorable Darrell M. Pierre, Jr., (hereinafter Mr. Pierre) represents Ms. Mengel. Ms. Alberta B. (Jack) Thompson (hereinafter Ms. Alberta) from the outset, was an incompetent surviving widow of decedent. Mr Bishop represents Ms. Alberta , Decd. 1996, and Mr Bunyan. Mr Bunyan is another attorney Mr Bishop sought out to assist him in the mishandling of this estate.

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Petitioner/Relator respectfully prays that a Writ of Certiorari issue to review the final Judgment of the Ohio Supreme Court (hereinafter OSC) dismissing petitioner's complaint in mandamus, filed to compel OSC Clerk, Ms Mengel, to file Memorandum in Support of Jurisdiction and Notice of Appeal. (Ex E, App 5a) Petitioner claimed Right of Appeal.

OPINION

An Entry was placed in the OSC record (Ex A, App 1a) purporting to sustain Ms Mengel's Motion To Dismiss complaint in Mandamus, (5/3/00), (Ex E, App 5a). On (6/1/00), the record did not contain a date of an entry affirming or dismissing a decision of any Court. On (6/26/00) counsel for Ms Mengel returned remailed copies of Motion For Reconsideration to petitioner. (Ex F, App 6a)

OPINION AND ENTRY 4/14/1999, NR185

... decedent died intestate on (12/19/91) .. On (1/29/92 Ms Alberta) --filed an application to administer the decedent's estate ... she was appointed the next day (Ex I, App P 9a) Within weeks (Ms Alberta's) appointment was being attacked. Due to (Ms Alberta's) health and advancing age the court replaced her as fiduciary and appointed (Mr Bunyan) in her place on (6/13/92) ... Mr Bunyan filed an amended inventory (9/18/92) ... totaling $81,913.86. While (Ms Alberta) had been removed ... in (6/92) , Mr Bishop was still involved in representing (Ms Alberta) at least ... (8/26/94) ... when ... Court of Appeals ... overrul(ed) petitioner's exceptions to her final account ... majority of time ... was incurred after (Ms Alberta) filed her final account ... (Ex I, App 10a)

Hamilton County Probate Court's (hereinafter HCPC) "Finding of Facts" on 4/14/99 is contrary to the court's assertion of 8/25/92: ... you are only arguing about the inventory ... Ms Alberta prepared ... that's wiped out. (920479 , NR 41, P 19, L 8)

> ... no substitution of counsel appears to have ever been filed, Mr Bunyan began identifying himself as the attorney for the estate as early as (9/18/92). (Ex I, App 10a)

This is contrary to Mr Bunyan advising the Court, 8/25/92: "I planned .. Mr Bishop as my Attorney. (NR 41, P 15, L 16)

Mr Bunyan billed the estate fees for hearings on (6/22/92, 7/6/92, 7/13/92 before HCPC declared it appointed him. (NR 173)

> ... on 1/13/99 Mr Bunyan billed decedent's estate ... attorney fees ...$28,293.75 (NR 173) ... On (3/8/99) Mr Bishop filed ... attorney fees $35,793.75 (+) $455.00. (Petitioner) filed objections ...barred by res judicata. (Ex I, App 10a, 11a)... As early as 4/92, Mr Bishop had predicted that (petitioner's) ... actions would constitute a burden upon the estate ... attorney's ... fees ... (Ms Alberta) served as fiduciary from 1/29/92 until she was discharged, after final account .. approved ... (8/26/94) (Ex I, App 13a)

Ms Alberta was removed in (6/92) and Mr Bunyan replaced her as fiduciary on (6/13/92) is not supported by court record.

NOTIFICATION OF STATE ATTORNEY GENERAL

28 USC 2403(a) and/or (b) may be applicable. Petitioner filed a complaint in mandamus (Ex A) to compel the Ms Mengel to

file his memorandum in support of jurisdiction with a copy of previously filed notice of appeal annexed. (Ex G, App 7a)

Petitioner attempted to bring to the attention of the OSC, Ms Mengel's failure to accept timely filed documents or give proper notice that complaint in mandamus was dismissed.

Ms Alberta's appointment was void ab initio due to her incompetency and her attorney's failure to give decedent's next of kin notice of the application he filed on her behalf. (2113.06)

HCPC had no jurisdiction to appoint a stranger, to replace Ms Alberta as administrator, without determining the suitability of decedent's heirs. Golembiewski's Estate 67 N.E. 2d 328 (OSC 1946)

> Requirement of notice to widow or husband and next of kin of (decedent) of application for (administration of estate) held mandatory and jurisdictional ORC 2113.06 Scholl V Scholl 173 NE 305 (OSC 1930)

> Whenever property passes by ... intestate succession ... proceedings may be had in the probate court to determine the persons entitled to such property RC 2123.01

Mr. Bunyan did not execute a written acceptance of his duty as required by ORC 2109.02. HCPC did not rule on claims of: 1) failure to give notice of application to administer decedent's estate; 2) Ms Alberta's incompetency; nor 3) embezzling and concealing of estate assets. (2113.06, 2109.50, 2109.52) (920479, NR 14, 23)

No inventory of decedent's assets at death. ORC 2115.02

No claim was made for administrator's fee. (2113.35). No determination that Ms Alberta fell within the classification of heirs under descent and distribution statutes; (2123.01 et al) O'Shaughnessy V Stefft 117 N.E. 2d 734 (1953)

Only Trial Court can correct error in failing to certify determination as final for purposes of rule on multiple claims or parties. Ollick V Rice 46 N.E. 2d 1063 (1984)

HCPC allowed attorney fees, without jurisdiction, and for services not rendered to the estate. (2113.36). In addition to fee claimed here, Mr Bishop wrongfully claimed $40,650.00 attorney fees from Ms Alberta's estate (Case No 963951). HCPC failed to give full faith and credit to suits filed in Kentucky and Ohio to determine Ms Alberta's interest in decedent's estate, in violation of U.S. Const. Art. 4, Sec 1 or to take judicial notice of the record.

JURISDICTION

Jurisdiction is invoked pursuant to 28 USC 1257(3). A federal question first arose when Mr Bishop filed an application on behalf of Ms Alberta, an incompetent person, without notice to any of decedent's next of kin in Ohio. (ORC 2113.06)

After giving Ms Alberta notice of petitioner's application to administer decedent's estate in Kenton County Probate Court (hereinafter KCPC), petitioner learned that Ms Alberta had been appointed administratrix of decedent's estate in Ohio without notice to any of decedent's next of kin. (ORC 2113.06)

Petitioner filed Motion in HCPC, to revoke Ms Alberta's letters and remove her for: failure of her attorney to give notice of application to administer estate; concealing and embezzling of estate assets. (920479, NR 5) HCPC never ruled on the issues, having declared on 8/25/92; "... that's really moot ... because she is removed. (920479, NR 41, P 5)

At no time did Mr Bishop offer any evidence to dispute decedent's residence in Kentucky. (Ex N, O, P, App 20a, 21a, 22a)

HCPC failed to take judicial notice of the record or enter a final order (NR 14) on petitioner's motion (NR 5). Petitioner appealed (Ex J App 15). Certiorari was denied by this Court in each instance.

Docket Sheets (920479, C 92017) have been altered (assignment of Fiduciary and Attorney) ... changed the assignment of Ms. Alberta (Jack) Thompson, Fiduciary, to Mr George W Bunyan, Jr, Fiduciary and assignment of Mr Alvertis W Bishop, Jr, attorney to Mr George W Bunyan, Jr, attorney (The assignments on transcript of docket and journal entries [Appeal # 990341, Case # 920479, C 92167] CERTIFIED AS TRUE AND CORRECT COPIES OF THE ORIGINAL TRANSCRIPT OF DOCKET & JOURNAL ENTRIES ARE NOT TRUE AND CORRECT COPIES OF THE ORIGINALS)

Probate Judge/Clerk did not sign the Certificate Of Appointment And Incumbency for Ms Alberta. (920479, NR 2).

HCPC did not sign Entry appointing Mr. Bunyan Administrator (NR 26, Ex T, App 29a); nor take judicial notice of the record.

HCCAP failed to rule on all issues briefed on appeal (Ex M, R, App 18a, 25a)

A federal question arose when Ms Mengel failed to file petitioner's Memo in Support of Jurisdiction: In Re Estate of Eddie Thompson, Sr, decd; CAP # 990341, Trial # 920479, C 92167 with a copy of previous filed Notice of Appeal annexed (Ex G, App P 7a)

A federal question arose when OSC dismissed complaint for a writ of mandamus to compel OSC Clerk to file Memorandum in Support of Jurisdiction with copy of Notice Of Appeal annexed. (Ex E, App 5a)

STATEMENT OF THE CASE

On February 15, 2000, the OSC Clerk returned petitioner's memorandum in support of jurisdiction and copy of previously filed notice of appeal (Ex H, App. P 8a).

As a result, on 2/28/00, petitioner filed a petition for a Writ of Mandamus (Ex A, App 1a) to compel Ms Mengel to file petitioner's memorandum in support of jurisdiction, and notice of appeal. (Ex G, App 7a)

Petitioner requested Ms Mengel's office to serve Mr Bunyan and Mr. Bishop as parties to the complaint. (Ex B, App 2a)

Forty Dollars filing fee (Receipt # 17479) and $100.00 deposit (Receipt # 469) were collected by the Clerk in State ex rel Thompson V Hon Marcia Mengel, et al (Ex B 1, B 2, App 2a). Record does not show petitioner paid $40 filing fee (Ex A, 1a)

Neither Mr Bishop nor Mr. Bunyan were served. (Ex A)

On March 21, 2000, Mr. Pierre filed a Motion to Dismiss (Ex A, App. 1a), which petitioner received on March 27, 2000.

Petitioner's Reply was returned with letter dated April 6, 2000: "... response ... is due within 10 days from the date the motion is filed ..." S CT Prac XIV (Ex C, App 3a).

By letter dated 5/18/00, petitioner was informed ... Petition for Writ of Mandamus had been terminated (Ex D, App 4a). Entry date stamped, filed 5/3/00 (Ex E, App 5a) was mailed in envelope postdated 5/26/00, was received 5/30/00. Record does not show date, Entry Description (5/03/00 Sustained) was filed by Ms Mengel, nor that a Reply To Motion To Dismiss was tendered, and refused by Ms Mengel. (Ex A, App 1a)

Petitioner received a letter from counsel to the Clerk (not Mr. Pierre who was previously identified as counsel to the clerk), dated 6/26/00, stating "Reply to Motion to Dismiss was ... unfileable". (Ex F, App. P 6a)

STATEMENT OF FACT

This is a case where an attorney, filed an application to administer decedent's estate on behalf of an incompetent surviving

widow, without notice to any of decedent's next of kin living in Ohio. (920479, NR 1, 2, 5) She was appointed the next day. (Ex I, App 9a)

In application for fees, Mr. Bishop falsely stated, he prepared Application for Surviving Spouse and next of Kin (NR 177, P 5).

Decedent's residence was located in Kentucky. (Ex. N, O, P, U, App P 20a, 21a, 22a, 31a). Mr. Bishop and Gabbard appeared at hearings in March 92, opposing petitioner as administrator in Kentucky, and asked KCPC to give full faith and credit to Ms. Alberta's appointment in Ohio. Mr. Bishop was able to delay the hearing to appoint petitioner administrator indefinitely.

KCPC denied Mr. Bishop's and Mr. Gabbard's request for full faith and credit to Ms. Alberta's appointment in Ohio in March 1992, without objections from either Mr. Bishop or Mr. Gabbard.

After a hearing on petitioner's Motion To Determine Heirship on May 4, 1992, with Ms. Alberta present, KCPC determined that decedent's children and grand children were entitled to inherit decedent's real and personal property (920479, NR 11).

Mr. Bishop and Mr. Gabbard scheduled an In Chambers Hearing in KCPC for May 8, 1992, to have Ms. Alberta appointed administratrix (not ancillary administrator) of decedent's estate in Kentucky, without notice to petitioner. Ms Alberta's application was denied, a second time, without objections.

On May 13, 1992, HCPC heard petitioner's Motion to Revoke and Remove Ms. Alberta. (920479, NR 5, 14, 37) The allegation in complaint, (920479, NR 5) that 1) Ms Alberta was incompetent; 2) Ms Alberta failed to give notice to next of kin of application to administer decedent's estate; 3) assets were being concealed and embezzled; were not denied. (Ex N, O, P, U, App 20a - 22a 31a)

Mr. Bishop: advised "... inquiries should only go as to propriety of (Ms Alberta's) appointment and ability to carry out her charge as

... an administrator" (P 15, L 20); falsely represented to HCPC that Ms Alberta filed "... an application to be appointed ancillary administrator in ... Kentucky." (NR 37, P 26, L 15) ... (decedent) did not have (Kentucky residence address) at the time of his death. (P 28, L 3)

Before Ms Alberta could respond to: "did (decedent) pay the balance of your house off?" HCPC inquired of Mr Bishop: "Did you object." (P 34, L 14) ... "If (Ms Alberta) can't handle her own affairs (if she's incompetent), how can she do this." (P 39, L 17).

Mr Bishop advised:

> ... I believe that the testimony before the Court is not that she cannot handle her affairs, the testimony is that she wishes the help of her niece (920479, NR 37, P 39, L 19)

(HCPC declared: " ...you are correct") (L 23)

> ... proper vehicle being employed ... by (Ms Alberta) to determine who are the heirs of the estate really are ... (Ms Alberta) by my advice, has verified (complaint) to determine heirship ... we will file precise same application before (KCPC) ... once we have an order from this Court to determine who the heirs ... are ... I do not believe it would be proper for (Ms Alberta) to simply take ... everyone ... at their word as to who are heirs (920479, NR 37, P 40, L 2) ...

HCPC declared: I am going to ask you to file the inventory within a week ... I am not going to rule on whether or not your client will be removed at this time ... taking under advisement. (P 41, L 13)

> HCPC declared I understand (see) ... today -- is only to determine whether or not the administratrix should be removed (P 42, L 6).... I am going to look at the inventory when it's filed ... that will have some bearing on how I rule." P 43, L 15)

On 6/7/94, Mr Bishop filed an affidavit respecting decedent's estate in Kentucky. (Ex U, App 31a). Kentucky was decedent's domicile. (Ex N, O, P, App P 20a, 21a, 22a)

Mr. Bishop claimed Ms Alberta had an interest in decedent's real properties in Kentucky from the outset and filed suit for dower in Kentucky on 8/13/92. That case was dismissed on the merits on 8/27/97. (Ex V, App 32a)

> A domiciliary administrator of an estate takes title to entire personal estate of deceased; and its succession or distribution is governed by lex domicilii of the deceased ... a county court has jurisdiction to grant letters of administration on various grounds other than local domicil ... i.e. where property is located ... where deceased died ... the mere grant of letters will not operate as an adjudication of domicil in a grant of administrator, when not necessary to the validity of the grant, will not be conclusive of domicil in another state. Baker v Baker Eccles and Co 61 Led 386

A proceeding for the appointment of an

> administrator is a proceeding in Rem., and if the court has jurisdiction its decision binds the whole world. Ewalt V Ames 6 O App 374

Decedent's residence was unchallenged.

After Mr. Bishop's request to appoint Mr. Bunyan Kentucky administrator (not ancillary administrator) was rejected by KCPC. Mr. Bishop falsely asserted, decedent did not have a Kentucky address (NR 37, P 22, L 16) contra the record .

Unable to get Ms. Alberta appointed administrator in KCPC, Mr. Bishop wrote HCPC a letter date June 18, 1992, recommending Mr. Bunyan as administrator of decedent estate in Ohio without notice to decedent's next of kin (NR , Ex Q, App 24a).

At hearing on June 22, 1992, Mr. Bishop told HCPC:

> .. evidentiary hearing (on inventory) should occur ... when the administrator has been replaced ... because on June 19, (the day after Mr Bishop had recommended Mr Bunyan (Ex Q, App 24a) Judge Wilke signed an Order removing the administrator ...I think we need administrator before we can go ahead (NR 40, P 9, L 19). (No Order removing Ms Alberta is in the record) ... up unto the removal hearing (5/13/92) we --never able to obtain the originals from the bank ... decedent's personal account at Sunrise (Bank in Kentucky) ... are included with the Kentucky estate, I though. (P 17, 17) ... so ... I suggest ... when the new administrator (Mr Bunyan) is installed, that person obtain ...

> statements from ... (Kentucky) bank, since we are going to now be treating that as part of the Ohio estate ... (NR 40, P 31, L13).

Mr. Bunyan charged an attorney's fee for attending the hearing on June 22, 1992. (NR 173, P 3) Records show that Mr Bunyan did not attend the hearing (NR 40). The record also shows that HCPC did not sign the Entry prepared by Mr. Bishop, appointing Mr. Bunyan successor administrator. (NR 27, Ex T, App 29a)

At no time did Mr Bishop ever offer any testimony before HCPC or KCPC that decedent was an Ohio resident.

Mr. Bunyan filed an unsigned Entry (date stamped 6/11/99) substituting himself in lieu of Ms Alberta as plaintiff, surviving spouse, Decd. (Ex. W, App 34a) This unsigned Entry suggested that continuation of "Suit To Determine Heirship" had become unnecessary and the same should be dismissed. HCPC had already declared: "If there's no order signed by the Judge, there's no order". (NR 186, P 12, L 24)

Ms Alberta was not found to be an heir of decedent's estate in Kentucky or in Ohio. Thus she was not entitled to administer the estate or to any portion of decedent's estate.

Ms Alberta's Original bond (NR 3) was canceled because she was found to be incompetent. Mr. Bishop secured a bond from the Ohio Causalty for Mr. Bunyan as administrator (NR 28) and Ms Alberta as a Conservator in Kentucky.

HEARING, 8/25/92, 920479,NR 41

> HCPC declared ... The reason I removed Ms Alberta is because she is an older lady and I did not think she has the expertise to handle this matter as administratrix of the estate (NR 41,

> P 4, L 18) The reason I appointed a lawyer to be an administrator is because you are representing yourself (P 8, L 12, P 9, L 1) ...
>
> The appointment by a probate court of an (administrator) who is not in a position to reasonably fulfill the obligations of a fiduciary, and, is therefore, not a "suitable" person to act in a fiduciary capacity, constitutes an abuse of discretion. In re: Young, 4 O App 2d 315 (1964)

HCPC declared .. "you are asking ... that I appoint one of you as the administrator (P 20, L 3) ... I am saying that not fair to her ...

The reason HCPC gave for appointing Mr Bunyan was an abuse of discretion and denied petitioner Due Process and Equal Protection of the law as guaranteed by 5th and 14th Amend. to the U. S. Const.

HEARING, 9/21/92, C 92167, NR 11

When petitioner asked the Court:... When did you ask for an entry ... a final order or entry removing Ms Alberta ? (P 6, L 1) HCPC asserted: (petitioner was blind at the time) I think that's in the record. Would you want to see it (P 6, L 5) Mr Bunyan retorted:

> ... I have this motion ... prepared to ... move ahead in order to dismiss this suit altogether. (P 6, L 13) ... all I need is verification ... marriage licenses to show the relationships of all the parties claimed (P 6, 15) (Ms Alberta) will receive, under my administration of this estate,

> everything ... the law allows to her as a surviving spouse (92167, NR 11, P 8, L 18).
>
> Where an (administrator) dies or resigns without filing any account of the administration of his trust, it is the duty of his successor in the trust to compel an accounting and payment to him of any balance due from such (administrator) to said estate. Hocking Valley Ry Co V White 101 NE 354

Petitioner brought to the Court's attention:

> ... removal (of Ms Alberta) was based on motion ... require(d) ... entry, showing that court removed (Ms Alberta) for cause (NR 11) P 9, L 8)... (asked the Court) ..FOR THE RECORD ... tell us when you gave instructions to prepare an entry to remove Ms Alberta and on what FACTS she was removed. (P 15, L 2). The Court declared: ... When we were here the last time I told you why she was removed, I am not going to go on with that ... (P 15, L 6).

When Petitioner advised: ... Mr. Bunyan had no authority to go to Kentucky (with Mr Bishop and Ms Alberta) and withdraw any money; HCPC declared: "You can raise that when you file your exceptions." (P 24, L 17).

Petitioner brought to Court's attention:

$50,000 CD was missing ... $10,000 good-faith money (decedent) put up on (a) project. (P 25, L 19). (ORC 2115.02)

HEARING, 3/26/93, NR 80

Mr. Bishop advised: I represent (Ms Alberta) (NR 80, P 157a, L 21); ... "We (Mr Bishop and Mr Bunyan) would join in objection on behalf of (Ms Alberta) as administratrix de bonis non ..." (P. 158, L. 8). Mr Bunyan objected to inquiry into Kentucky litigation (P 191, L 24) Mr. Bunyan did not seek any administrator's fee in Ohio. (ORC 2113.35)

Petitioner requested HCPC "to point out the order in the record where the court said (decedent) is (was) domicile in Ohio." P (159, L 9) ... Petitioner was blind at the time.

> HCPC declared: I have done that in previous instance ... I read it into the record the last time ..I am not going to do it again. Now let's get on with the evidence. (P 159, L 13, 22)

HCPC sustained Mr Bunyan's objections to petitioner asking:

> By what authority are you claiming decedent to be domiciled in Ohio? (P 161, L 8)
>
> Mr Bunyan admitted .. I took (Ms Alberta) with me (P162, L 24)...I needed the information which was available to her ... I had to work very closely with her ... she had the knowledge of where the assets were ... she had control of some ... she was the best person to inform me ... to assist me ... to work with me ... we took her with me (P 163, L 7) ... I was not required to give a notice to any other heir (L 19)
>
> She signed ... They told her to sign ... For convenience of the bank ... I pointed out that I was ... and I showed them the documents I had along with ... (Ohio non residence) tax release

> document ... they wanted my signature ... to be sure ... money was deposited into the estate account ... It wasn't in the estate account at this time. (P 164, L 1)

HCPC declared: I understand ... but domicile is not before me (P 170, L18) Contra, Mr Bunyan is appointed as the domiciliary administrator. (P 195, L 17).

Mr Bunyan acknowledged that Mr Bishop secured (Ohio non residence) tax release forms. (P171, L 6) HCPC sustain Mr Bishop and Mr Bunyan's objections to: "Did you make application ... for (Ms Alberta) to be administrator of decedent's estate in Kentucky." (P 178, L 22)

Petitioner advised .. we are documenting Mr Bishop has claimed all along that this was a Kentucky estate ... Mr Bunyan acknowledged: You have just answered it. I object to that (P 183, L 24)

In response to: "What date was (Ms Alberta) removed in Ohio"

Mr Bunyan falsely stated "It's ... in the record, your honor" Bishop stated: "I don't remember" (P 185, L 15) HCPC declared: ...I have made it clear from day one domicile is not before me ...

HCPC sustained Mr Bunyan's objection to question: "Why was Ms Alberta removed?" (P 208, L 6) HCPC declared: ... whether or not she was being removed or not is clearly a matter of record (L 19) ... the court entry speaks to that issue (L 22) ... the June 19th entry (P 210) ... I've got that entry ... in front of me" (L 24). (Ex R App 25) A review of the entry revealed that the court found Ms. Alberta not a suitable person, thus the court abused its discretion in appointing her In re: Young 4 O App 2d 315 (1964)

HEARING , 6/15/93 NR 98

Petitioner advised HCPC that on May 13, 1992, Ms. Alberta

admitted no notice of her application was given to any of decedent's next of kin. This was a violation of due process and the equal protection clauses of the U.S. Constitution, 5th & 14th Amendments.

Appointment without notice is void Scholl V Scholl 173 N E 305 ... Court of record speaks through its journal State V Day 26 NE 2d 1014. There is no Entry in the record

Acknowledging the fact --HCPC declared:

> "My problem is I removed Ms Alberta ... She is REMOVED." (NR 98, P 7, L 16).

HEARING, 11/18/94, NR 139

Petitioner advised the Court

> ... I have been unable to find the order in the record where (Ms Alberta) was removed ... if you would ... point it out ... one of the sighted gentlemen ... would read ...where she was removed (NR 139, P 22, L 13).

Mr. Bishop advised... "(petitioner) knows .. has been pointed out ... dozen times by order of this Court of May 11, 1992 removing (Ms. Alberta) as administrator, and I point out again it is in the record. The April 13 entry (920479, NR 9) has the language." (P 24, L 12).

Mr Bishop and Mr Bunyan knew that statement was false. HCPC should have recognized that statement was false.

> Where federally protected rights have been invaded, it has been the rule from the beginning that Courts will be alert to adjust their remedies so as to grant the necessary relief . Bell V Hood 327 US 678, 684 (1946)

HEARING, 4/8/99, NR 186

No administrator asked the Court to pay any attorney fees. HCPC addressed Mr Bishop, not Mr Bunyan. Mr Bishop said he was representing Ms Alberta, who had passed away July 2, 1996. HCPC said it removed Ms Alberta on June 13, 1992. (Ex I, App 10a)

> ...you are asking for attorney fees of $36,078.75 (P 2, L 1) ... you only represented the administratrix for approximately six month (L 8) ... only amount that you can take out of the estate is the amount that you charged for that six month period in which she was removed. Then you have to charge her (NR 186, P 2, L 11) ... (Mr. Bishop) "I tried" P 2, L 15

Petitioner inquired ...you removed her (6/19/92) (P 6, L 11).

> Mr. Bunyan who had no standing, objected: ... we have litigated that very issue all the way to the United States Supreme Court. (P 6, L 14) ... issue has been raised and litigated (P 7, L 1).

Certiorari was denied by U.S. Supreme Court in each instance.

Petitioner advised --No final order ... removing (Ms Alberta) (P 7, L 3, P 8, L 24, P 10, L 20) HCPC asserted ...

> All right. I'll look at that ... move on. (P 10, L 21)

HCPC never entered a final Order.

> In an appeal involving multiple issues or parties, order which resolves one but not all issues and /or parties without express determination by Court that there is no just cause for delay, renders order nonappealable. Ollick V Rice 476 NE 2d 1062 CAP Cuyahoga Cty 1984

> Petitioner advised --suit ... filed on behalf of (Ms Alberta) by Mr Bishop ... to determine heirship ... (was Mr. Bishop's effort to prove ... Ms. Alberta) was entitled to be included as a beneficiary of the estate ... he was filing the same suit in Kentucky. (P 11, L 2) ... KCCC dismissed Ms Alberta's Claim for dower on the merits, which means that (Ms Alberta had no interest in (decedent's) estate (P 12, L 7)
> HCPC said -- If there's no order signed by the Judge, there's no order (P. 12, L 23) ... Court speaks through its entries. (P 13, L 6)

HCPC failed to find Ms Alberta an heir in the suit, to determine heirship, Mr. Bishop filed on her behalf. (92167, NR 11, Ex W, App 34a) It's clear that the Order is not signed by the Judge.

Mr. Bishop wrote a letter requesting Court to appoint Mr. Bunyan dated 6/18/92 , (Ex Q, App. P 24a) The record shows an Entry was filed on July 13, 1992 and the Court did not sign the Entry (NR 26, Ex T, App P 29). Mr. Bunyan charged fees for attending hearings 6/22/92, 7/6/92, 7/13/92. (NR 173, P 3).

Because Mr Bishop did not serve notice of application to administer decedent's estate, he filed on behalf of Ms Alberta, on decedent's next of kin: HCPC had no jurisdiction to appoint Ms Alberta administrator; nor Mr. Bunyan to replace her.

REASONS FOR GRANTING THE WRIT
THE FEDERAL QUESTION

OSC, a court of last resort, has decided an important federal question in a way that conflicts with decisions of this court: Burns V

Ohio 360 US 252, Pennoyer V Neff, 95 US 95 US 714, Baker V Baker Eccles and Co 61 Led 386, Adams V Saenger 58 S Ct 454 (1938); and state court decisions (State ex rel Wanamaker V Miller 128 N. E. 2d 110, State ex rel, Boggs V Bd of Edn 647 N. E. 2d 788) The state court judgment ignores federal grounds, namely the "Due Process and equal protection Clauses" of the 5th and 14th Amendment U. S. Constitution Non federal grounds are inadequate to support the state court judgment. The OSC refrained from an analysis of state constitutional grounds because the Ohio Constitution affords no less protection than the Federal Constitution in this area. Therefore, a federal question was presented and erroneously decided. It is the responsibility of the United States Supreme Court to determine for itself the answer to the question of whether the state court judgment is base upon a non federal ground and whether the non federal ground is adequate to support the state court judgment. The answer to both questions should be no.

> The imposition by the State of ... barriers restricting the availability of appellate review for (litigants) has no place in our heritage of equal justice under the law. Burns Supra

MOTION TO DISMISS

Petitioner served a copy of the Petition For a Writ of Mandamus on Respondent on 2/28/00 (Ex A, App P 1a) Respondent filed a motion to dismiss on 3/21/00. (S Ct. R X)

> Failure to notify parties that Court is converting motion to dismiss for failure to state claim into one for summary judgment is itself reversible error. State ex rel Boggs V Bd Of Edn. 647 N.E. 788 (OSC 1995)

Complaint in mandamus states claim if it alleges existence of legal duty and want of adequate remedy at law with sufficient particularity so that respondent is given reasonable notice of claim asserted. OCR 12(B) State ex rel Hanson V Guernsey CTY Commrs 605 NE 2d 378 (OSC 1992)

Burns V Ohio 360 US 252 instructs:

It is the duty of (Ms Mengel), in the absence of instruction from the Court to the contrary, to accept for filing any paper presented to (her), provided such paper is not scurrilous or obscene, is properly prepared and is accompanied by the requisite filing fee.

(Ms Mengel) requesting dismissal for failure to state claim upon which relief can be granted may not rely on allegations or evidence outside the complaint; otherwise, motion must be treated, with reasonable notice, as motion for summary judgment. CR 12(B), 56 State ex rel Hanson V Guernsey Cty Commrs. 605 NE 2d 378 (OSC 1992)

In reviewing complaint, Court must take all material allegations as admitted and construe all reasonable inferences in favor of nonmoving party. (CR 12(B)(6) State ex rel Bogg V BD of EDN 647 N.E. 2d 788 (OSC 1995)

There is no evidence to base any dismissal on. The Docket does not list the day the clerk made an Entry dismissing complaint in mandamus. It was not entered by 6/1/00. The dismissal purportedly took place on 5/3/00. (Ex A, App 1a) The Clerk did not mailed petitioner a copy of the Order until 5/26/00 (Ex 4. App P 4a) The order sustaining does not comply with O Civ R 58.

> In absence of any indication on face of document purporting to be ... court order that it was filed with clerk of court, or, if it was so filed, when it was filed, "order" at issue lacked final appealability. O Civ R 58, William Cherry Trust V Hofmann 489 N.E. 2d 832 (O App 1985)

> The requirements of this rule are not met by a mere written minute or an oral pronouncement by court or judge without the preparation and filing of a journal entry. State ex rel Industrial Commission V Day 26 N.E. 2d 1014

The requirement of this rule is not met by Ms Mengel placing an order in the record without any indication of the date it was placed in the record. Ms Mengel declared:

> Under S. Ct. Prac. R. XIV, Sec. 4(B), a response to a motion is due within 10 days from the date the motion is filed. (Ex C, App. 3)

> OSC SAID IN State, ex rel, Spirko V Court of Appeals:
> A proceeding for a Writ of Mandamus is a civil action ... Consequently, Mandamus actions are governed by the ORCP.

At no time did the Ms Mengel claim that Petitioner's Notice of Appeal (Ex G, App P 7a) or Memorandum in Support of Jurisdiction were untimely tendered.

> If notice of appeal substantially informs all parties of order and tribunal or court from which appeal is taken and to what court appeal is taken, so that no parties are prejudiced, then it is sufficient notice. 2505.05 Woods V Civ Serv Com'n City of Cleveland 455 NE 2d 709

> Petitioner's failure to contemporaneously file memorandum in support of appellate court's jurisdiction along with notice of appeal was a mere technical and not jurisdictional defect, which did not require dismissal of appeal. Cork V Bray 555 N.E. 2d 936 OSC 1990

> Appeals and right of appeal are favored by law, and where a notice of appeal was timely filed, but was incorrectly captioned and filed in wrong court, appellate court, no prejudice being shown, properly ordered notice refiled in proper Court as of original filing date. Perry V Baskey 107 NE 2d 328

> > An allegation in the complaint ... must be taken as true where not denied by the answer. (CIV R 8) English V Arizona, Use of Griffith, 214 US 259.

Petitioner never received timely notice of final Entry dismissing Petition for Writ of Mandamus (Ex E, App 5a), thus he was denied the opportunity to invoke the jurisdiction of the Ohio Supreme Court. S Ct. Prac. R. XI, Sec 2 (A)

Failure to give reasonable notice of final appealable order is denial of legal redress of injuries in all pending and future cases. Const. Art. 1, Sec 16, Moldovan vs Cuyahoga County Welfare Department, 496 N. E. 2d 466 (OSC 1986).

NOTICE OF APPLICATION TO BE ADMINISTRATOR

HCPC acknowledges Ms Alberta was appointed the next day (without notice). (Ex I, App 9)

It is undeniable that Mr Bishop did not give notice to decedent's next of kin of the application he filed on behalf of Ms. Alberta. Mr. Bishop falsely stated in his application for attorney fees that he: "Prepare Application For Authority Surviving Spouse And Next Of Kin. (NR 177, P 3)

Requirement of notice to widow or husband and next of kin of (decedent) of application for (administration of estate) held mandatory and jurisdictional. ORC 2113.06, Scholl V Scholl 173 N.E. 305 (OSC 1930).

Provisions of statute setting forth the person to whom and the order in which letters of administration shall be granted administrator of the estate from the preferred class therein described, if there is a competent person in such a class RC 2113.06 In re Estate of Vickers 170 NE 2d 85 (1959)

... The term "next of kin" mean only those persons... entitled to inherit ... a person ... entitled to inherit nothing from an estate has no priority in appointment as administrator of estate and has no capacity to attack the appointment of another person. Inre: Kelly 144 NE 2d 130

> To proceed without notice is a violation of due process and equal protection clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution. Pennoyer V Neff 95 US 714, 728,729

> ... In event of incompetency, unsuitability or neglect, the spouse's right to priority is lost ... One of the next of kin ... resident of the county, is entitled to appointment ... in the absence of incompetency, unsuitabilitity or neglect. In Re Golembiewski's Estate 67 N. E. 2d 328.

HCPC violated petitioner's constitutional right on 6/22/92, when it arbitrarily refused to consider any of decedent's next of kin to administer decedent's estate, and arbitrarily scheduled a hearing for 7/6/92 to appointed Mr Bunyan administrator. (Ex S, App 27a)

HCPC did not sign entry prepared by Mr Bishop appointing Mr Bunyan (NR 26, Ex T, App 29a)

> ORC 2109.02 provides, inter alia ... Letters of appointment shall not issue until a fiduciary has executed a written acceptance of his duties ... No act or transaction by a fiduciary is valid prior to the issuance of letters of appointment to him.

Notwithstanding the failure of Mr. Bishop to give notice of Ms Alberta application to be administrix; Ms. Alberta was unable to execute a written acceptance of her duty and Mr. Bunyan did not execute a written acceptance of his duties. ORC 2109.02

> Fiduciary of a decedent's estate has no right and can not be authorized by Probate Court which appoints him to be a party to a compromise of succession rights in the decedent's estate. In Re: Cantor's Estate 200 N.E. 2d 515.

Mr Bunyan failed to compel any accounting from Ms Alberta.

When Mr Bishop filed application to administer decedent's estate on 1/29/92, he failed to list real property in Ohio that decedent had an interest in. Mr Bishop listed personal property @ $75,000.00, though he estimated decedent's total estate value at $ 0.00, and falsely claimed decedent owed Ms Alberta $3,600. (920479, (NR 1)

When petitioner inquired about the inventory Mr Bishop filed on behalf of Ms. Alberta. HCPC declared You are only arguing about the inventory is that Ms Alberta prepared and I am saying that wiped out. (NR 41, P 19, L 8)

> Where the executor dies or resigns without filing any account of the administration of his trust, it is the duty of his successor in the trust to compel an accounting and payment to him of any balance due from such (administrator) to said estate. Hocking Valley Ry. Co V White 101 N.E. 354 (1913)

FINAL APPEALABLE ORDER

Petitioner advised HCPC, inter alia: Mr Bishop filed an application on behalf of (Ms Alberta) who was incompetent without notice to any of decedent's next of kin, which meant that the appointment of (Ms Alberta should have been declared null and void. (NR 186, P 5, L 20)

HCPC declared ... you see that's moot today (NR 186, P 5, L 2)

Petitioner advised: HCPC never put on a final order removing (Ms Alberta) . (P 7, L 3)

HCPC acknowledged this on the record:

> ... do you remember a long time ago, you appealed an order that I made and I told you, I said, You can't do that because there was no final order put on to appeal ... I told

you that. (NR 186, P 14, L 13) ... appeal ... was dismissed because no final order had been put on. (NR 186, P 16, 5) Petitioner was blind at the time.

... I explained that to you and I wanted to save you the effort ... but you did it anyhow (NR 186, P 16. L 11) ... Now, if no final order was put on in reference to (Ms Alberta), that would be for Mr. Bishop to raise. That wouldn't be something for you to raise.

When Petitioner inquired:

... I understand (know) that you appointed (Mr. Bunyan) to replace (Ms) Alberta as administrator (dbn) HCPC said: "that's correct." Petitioner advised: ... my argument is that the error was that (Ms Alberta's) appointment was void. HCPC said: I understand (know) that. (NR 186, P 31, L 22)

This was an acknowledgment from the Probate Court, that Ms Alberta's appointment was void for lack of notice to decedent's next of kin and that HCPC had not entered a final order removing and revoking Ms Alberta's letters nor determined if assets of the estate were concealed and embezzled. In pass appeals, HCCAP had not cause a final Order to be entered.

Only trial court can correct error in failing to certify determination as final for purposes of rule on multiple claims or parties. Ollick V Rice 476 N.E. (1063 Cuyahoga County 1984)

Mr. Bunyan presented an unsigned Entry purportedly "Dismissing Suit to Determine Heirship"

The question could not properly be answered by an Ohio Probate Court without the benefit of a full hearing on all evidence and an adequate examination of the pertinent (Kentucky) law ... (HCPC) erred in failing to follow

procedures for determination of heirship as set out in R.C Chapter 2123 ... the procedure the trial court did follow, taken as a whole, prejudiced (Petitioner) In Re: Estate of Kinder 714 NE 2d 964 (O App. 3 Dist. 1998)

In special proceedings involving charge that person has concealed, embezzled or taken other wrongful action regarding property of estate, it is responsibility of court to have examination of accused and any other witnesses transcribed, with costs being assigned to appropriate party; accused and any other witnesses are considered witnesses of court, even though examination of these witnesses may be delegated to and actually conducted by counsel. RC 2109.50, 2109.52 In Re: Estate of Meyer 579 N.E. 2d 260

HCPC and HCCAP neglected to examine the accused and prevented petitioner from fully examining the accused.

Neither the HCPC nor HCCAP would address issues that were briefed nor take judicial notice of the record in this case (Ex N, O, P, V, W, App 20a, 21a, 22a, 32a, 34a).

All errors assigned and briefed in the Court of Appeals shall be passed upon by the Court of Appeals in writing, stating the reasons for the Court's decision Lumbermen's Underwriting, Alliance V American Excelsior Corp 294 N.E. 2d 225 (OSC 1973)

CONCLUSION

Ms Mengel failed to serve summons and complaints in mandamus on respondents Mr Bishop and Mr Bunyan. OSC Clerk does not deny that the memorandum in support of jurisdiction and copy of notice of appeal were timely. It's undenied that Ms Alberta

1) was incompetent; 2) was appointed without notice, and 3) she was concealing funds that was being embezzled; thus her appointment was void and there is no final order on any of these issues. Consequently the HCPC had no jurisdiction to appoint a stranger, without, first determining if any of decedent next of kin were qualified.

Petitioner's Constitutional Right to Due Process and Equal Protection of the law as guaranteed by the 5th and 14th Amendments have been violated by the failure of OSC Clerk to: 1) give timely notice of Court Order denying Writ of Mandamus; 2) file petitioner's response to motion to dismiss; 3) File motion for reconsideration of order dismissing petition for writ of mandamus 4)serve Mr. Bishop and Mr Bunyan as parties; 5) file timely filed notice of appeal and Memorandun in support of jurisdiction.

Wherefore, Petitioner respectfully request this Court to grant Certiorari, reverse decision below and remand with instructions.

1. It was error for Ms Mengel to enter an Order sustaining a motion to dismiss a complaint in mandamus without showing the day the Order was entered.
2. OSC committed plain error in granting Respondent's motion to dismiss complaint in mandamus; where Ms Mengel, in the absence of instructions from the Court refused to accept for filing "Petition For Writ Of Mandamus To Compel her To File Petitioner's Claimed Appeal Of Right" presented to the Court that were neither scurrilous nor obscene, were properly prepared and was accompanied by the requisite filing fee.
3. It was error for Ms Mengel to take copies of petition for writ of mandamus to service on desired parties, collect fee in advance; then fail to service all parties.

4. Appointment of an incompetent surviving widow, as administrator of an estate, without notice to decedent next of kin is void ab initio and does not give Court jurisdiction to appoint a stranger administrator of decedent's estate on suggestion of widow's attorney..

5. An appointment of administrator, without notice to decedent's next of kin was void ab initio and in the absence of a hearing to determine the suitability of the heirs HCPC had no jurisdiction to appoint a stranger

_____

Eddie Thompson, Jr, Pro se

APPENDIX

PRINTED: 6/01/00 REP: PRDOCKT

THE SUPREME COURT OF OHIO
CASE INFORMATION
Ex. A

GENERAL INFORMATION

CASE: 00-0407 Mandamus Action
FILED: 02/28/00

The State ex rel. Eddie Thompson, Jr.
v. Honorable Marcia J. Mengel, Clerk

PARTIES AND ATTORNEYS

Eddie Thompson, Jr.; REL - Relator
NOT REPRESENTED BY COUNSEL

Marcia J. Mengel; REP - Respondent
REPRESENTED BY: Darrel Martin Pierre, Jr., ...
REPRESENTED BY: Betty Dee Montgomery

DOCKET ITEMS

DATE	DESCRIPTION	FILED BY
02/28/00	Complaint in mandamus by (EJT)	REL
	$100 security deposit -costs (EJT) Receipt #469	REL
02/29/00	Summons & complaint issued to respondent(s)	
03/06/00	Return receipt/service of summon& complaint; Marcia J. Mengel served 3/2/000 Postage $4.52	

03/21/00 Motion to dismiss REP
DECISION: 05/03/00 SUSTAINED
END OF CASE INFORMATION

I hereby certify this document to be a true and accurate copy of the docket of the Supreme Court of Ohio for case number 00-407

MARCIA J. MENGEL, Clerk
S/ Deputy

on this 1st day of June 2000.

Ex. B 1 The Supreme Court Of Ohio $100.00
Office of the Clerk No 469

RECEIVED OF Eddie J. Thompson, Jr.
ONE HUNDRED DOLLARS, Deposit for Costs.

The State Ex rel. Eddie Thompson, Jr.

Case No. 00-407 vs.

Honorable Marica J. Mengel, Clerk, et al

FILED 2/28/2000 S/Jo Ella Jones DEPUTY

The Supreme Court Of Ohio $40.00
Ex. B 2 Office of the Clerk No 17479

RECEIVED OF Eddie J. Thompson, Jr.
FORTY DOLLARS, New Case Filing Fee.

The State Ex rel. Eddie Thompson, Jr.

Case No. 00-407 vs.

Honorable Marica J. Mengel, Clerk, et al.,

FILED 2/28/2000 S/Jo Ella Jones DEPUTY

Ex. C THE SUPREME COURT OF OHIO
30 EAST BROAD STREET, COLUMBUS, OHIO 43215-3414

THOMAS J. MOYER, Chief Justice
ANDREW DOUGLAS
ALICE ROBIE RESNICK
FRANCIS E. SWEENEY
PAUL E. PFEIFER
DEBORAH L. COOK
EVELYN LUNDBERG STRATTON

MARCIA J. MENGEL
Clerk

(614) 466-3931
(614) 466-5201

April 6, 2000

Mr. Eddie J. Thompson, Jr.
729 S. Crescent Ave.
Cincinnati, Ohio 45227

Dear Mr. Thompson:

Re: Case No. 00-407, *State of Ohio ex rel. v. Honorable Marcia J. Mengel, Clerk*

The enclosed response to the respondent's motion to dismiss is being returned to you because it is untimely and S. Ct. Prac. R. XIV, Sec. 1 (C) prohibits the filing of any document after the filing deadlines imposed by the rules.

Under S. Ct. Prac. R. XIV, Sec. 4 (B), a response to a motion is due within 10 days from the date the motion is filed. Therefore, any response to the motion to dismiss filed on March 21, 2000, was due on or before March 31, 2000.

Please note that S. Ct. Prac. R. X does not provide for the filing of a response to a motion to dismiss. It provides that, after an answer

or motion to dismiss is filed, the Supreme Court will proceed to either dismiss the case or issue an alternative or peremptory writ.

If you have questions concerning the Court's rules or procedures, feel free to contact the Clerk's Office at (614) 466-5201.

Sincerely,
S/ Mary Ann Dix
Chief Deputy Clerk

MAD/jmk
Enclosures

Ex. D THE SUPREME COURT OF OHIO
30 EAST BROAD STREET, COLUMBUS, OHIO 43215-3414

THOMAS J. MOYER, Chief Justice
ANDREW DOUGLAS
ALICE ROBIE RESNICK
FRANCIS E. SWEENEY
PAUL E. PFEIFER
DEBORAH L. COOK
EVELYN LUNDBERG STRATTON

MARCIA J. MENGEL
Clerk

(614) 466-3931
(614) 466-5201

May 18, 2000

Mr. Eddie J. Thompson, Jr.
729 S. Crescent Ave.
Cincinnati, Ohio 45202

RE: Case No. 00-407, State of Ohio ex rel. Eddie Thompson, Jr. v. Marcia J. Mengel, Clerk

Dear Mr. Thompson:

When the above-captioned case was filed with this office, you

deposited $100.00 as security for costs in accordance with Rules X and XV of the Supreme Court Rules of Practice. Enclosed please find a check in the amount of Ninety-Five Dollars and Forty-Eight Cents ($95.48). This represents the balance of that deposit remaining at the termination of the case ($100.00 minus any costs that were taxed against you).

If you should have questions, please feel free to contact me at 614/644-9316.

Sincerely,
S/Ann Schlatter
Secretary to the Clerk

Received in envelope
postmarked 5/23/00

Ex. E

The Supreme Court of Ohio

Filed
MAY 3, 2000
Marcia J. Mengel, Clerk
Supreme Court of Ohio

The State ex rel, Eddie Thompson, Jr.,
Relator,
v.
Honorable Marcia J. Mengel, Clerk,
Respondent

Case N. 00-407

IN MANDAMUS

ENTRY

This cause originated in the Court on the filing of a complaint for a writ of mandamus. Upon consideration of respondent's motion to dismiss.

IT IS ORDERED by the Court that the motion to dismiss be, and hereby is, dismissed.

S/ Thomas J. Moyer
Chief Justice

Envelope postmarked
May 26, 2000; received May 30, 2000.

Ex. F THE SUPREME COURT OF OHIO
30 EAST BROAD STREET, COLUMBUS, OHIO 43215-3414

THOMAS J. MOYER, Chief Justice
ANDREW DOUGLAS
ALICE ROBIE RESNICK
FRANCIS E. SWEENEY
PAUL E. PFEIFER
DEBORAH L. COOK
EVELYN LUNDBERG STRATTON

MARCIA J. MENGEL
Clerk

(614) 466-3931
(614) 466-5201

June 26, 2000

Mr. Eddie J. Thompson, Jr.
729 S. Crescent Ave.
Cincinnati, Ohio 452270

Re: Case Number 00-407, State of Ohio ex rel. v. Marcia J. Mengel, Clerk

Dear Mr. Thompson:

I am in receipt of your letter of June 17, 2000 and accompanying "Motion for Leave to File Motion for Reconsideration of May 3, Entry Dismissing Petition for Writ of Mandamus." Your Motion is unable to be filed pursuant to the Rules of Practice of the Supreme Court of

Ohio. Please refer to S. Ct. Prac. R. XIV, Sec. 1 (C), which requires that the Clerk refuse motions to waive the time requirements of the Rules.

Your Reply to the Motion to Dismiss was returned to you as unfileable, along with a letter, on April 6. 2000. A copy of the letter from Ms. Dix, Chief Deputy Clerk, is enclosed for your reference.

Yours truly,
S/ Emily Briscoe
Counsel to the Clerk

NOTICE OF APPEAL FROM A COURT OF APPEALS
IN THE SUPREME COURT OF OHIO

Ex. G NO. _____

FILED (CAP)
JAN 25, 2000
James Cissell, Clerk
Hamilton County

IN RE: Estate of Eddie James Thompson, Sr. Decd.

On Appeals from Hamilton County Court of Appeals, First Appellate District
#990341
Trial #920479, C92167

Eddie J. Thompson, Jr. — Appellant

v

Alberta B. (Jack) Thompson, Administratrix A.K.A. Alberta B. Jack, Decd., George W. Bunyan, Jr., Administrator, DBN/Attorney, Alberta W. Bishop, Jr., Attorney For Alberta B. Thompson/Jack and George W. Bunyan, Jr., Administrator DBN — Appellee

NOTICE OF APPEAL OF APPELLANT EDDIE THOMPSON, JR.

Appellant hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals First Appellate District, entered herein on December 29, 1999.

The Court of Appeals did not serve appellant with a copy of Notice of Order or Judgment sent to all parties . . . on 11/19/99.

This Case raises a substantial constitutional question and is one of public and great interest.

Respectfully submitted,
S/Eddie J. Thompson, Jr. pro se
729 S. Crescent Ave
Cincinnati, Oh 45229
1-513-961-6278

Rec's 2/15/00, Marcia J. Mengel, OSC Clerk

cc: Mr. George W. Bunyan, Jr., 30 E. Central Parkway, Cincinnati, Oh 45202, Mr. Alvertis W. Bishop, Jr. 30 E. Central Pkwy, Cincinnati, Oh 45202

S/Eddie J. Thompson, Jr.

Ex. H THE SUPREME COURT OF OHIO
30 EAST BROAD STREET, COLUMBUS, OHIO 43215-3414

THOMAS J. MOYER, Chief Justice
ANDREW DOUGLAS
ALICE ROBIE RESNICK
FRANCIS E. SWEENEY
PAUL E. PFEIFER
DEBORAH L. COOK
EVELYN LUNDBERG STRATTON

MARCIA J. MENGEL
Clerk

(614) 466-3931
(614) 466-5201

February 15, 2000

Eddie J. Thompson, Jr.
729 S. Crescent Ave.
Cincinnati, Ohio 45229

Dear Mr. Thompson:

The enclosed documents are being returned to you because the materials necessary to perfect your appeal were not submitted within the 45-day time period prescribed by Rule II, Section 2(A)(1).

S. Ct. Prac. R. II, Sec. 2(A)(4)(a) states that the provision for filing a motion for delayed appeal applies to appeals involving a felony. Since your appeal does not involve a felony, filing a delayed appeal does not apply.

Sincerely,
S/Rita A. Nash
DeputyClerk

/ran
Enclosures

Ex. I

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF EDDIE J. THOMPSON
CASE NO. 920479

FILED
APR 14, 1999
WAYNE F. WILKE
JUDGE & EX-OFFICIO CLERK
BY _____
DEPUTY CLERK

OPINION AND ENTRY SETTING ATTORNEY FEES

This matter came before Judge Wayne F. Wilke on April 8, 1999, regarding applications for attorney fees brought by George W. Bunyan, Jr. and Alvertis W. Bishop, Jr. Present were the applicants and Eddie Thompson, Jr., who opposes the requested fees.

FINDINGS OF FACT

The two fee applications before the Court are part of the last stages in the seven-year administration of this estate. Mr. Bishop seeks an attorney fee of $36,078.75 while Administrator d.b.n. Bunyan shall be granted a fee of $28,293.75.

The decedent died intestate on December 19, 1991. He was survived by a wife, Alberta Thompson, and three adult children. On January 29, 1992, Alberta Thompson filed an application to administer the decedent's estate and she was appointed administrator the next day. Within weeks, Alberta Thompson's appointment was being attacked. Due to the Alberta Thompson's health and advancing age, the Court replaced her as fiduciary and appointed George W. Bunyan, Jr. in her place on June 13, 1992. Mr. Bunyan filed an amended inventory on September 18, 1992 that indicated the estate owned assets totaling $81,913.86.

While his client had been removed as fiduciary in June of 1992, Mr. Bishop was still involved in representing Mrs. Thompson as fiduciary at least through August 26, 1994. That date is when the First District Court of Appeals entered a judgment entry affirming this court's July 2, 1993 entry overruling Eddie Thompson, Jr.'s exceptions to her final account. The evidence indicates that majority of the time Mr. Bishop spent on this estate was incurred after Mrs. Thompson filed her final account. While no substitution of counsel appears to have ever been filed, Mr. Bunyan began identifying himself as the attorney for the estate as early as September 18, 1992.

After several years of successfully defending a number of appeals, Mr. Bunyan is prepared to close this estate. On January 13, 1999, Mr. Bunyan filed an application for attorney fees in the amount of $28,293.75 for services he has rendered to the Estate. In support of this application, Mr. Bunyan attached his timesheets indicating he has spent

226.35 hours on this estate.

On March 8, 1999, Mr. Bishop filed an application for attorney fees in the amount of $35,793.75 plus costs of $455.00. Mr. Bishop attached timesheets that indicate he spent 286.35 hours on this estate.

Eddie Thompson, Jr. filed objections to the payment of fees to both Mr. Bunyan and Mr. Bishop. However, Mr. Thompson's objections concern matters already litigated and accordingly, are barred by *res judicata*.

CONCLUSIONS OF LAW

This court is granted exclusive jurisdiction to determine the reasonableness of attorneys' fees which are to be paid by a fiduciary and which are allowed as part of the expenses of administration. *In re Estate of Cercone* (1969), 18 Ohio App.2d 26, 31. Several distinct yet overlapping provisions concern the payment of attorney fees for services related to a decedent's estate. The actual authority for the payment of fees is codified at R.C.§2113.36, which provides, in part:

> "When an attorney has been employed in the administration of the estate, reasonable attorney fees paid by the executor or administrator shall be allowed as a part of the expenses of administration. The court may at any time during administration fix the amount of such fees and, on application of the executor or administrator or the attorney, shall fix the amount thereof."

While Superintendence Rule 71 provides guidance with respect to the payment of attorney fees related to probate matters, Disciplinary Rule 2-106 is even more informative.

Disciplinary Rule 2-106(B) lists numerous factors to be considered as guides in determining the reasonableness of a fee. Those factors include the time and labor required, the novelty and difficulty of the questions involved, the fee customarily charged in the locality for

similar legal services, the nature and length of the professional relationship with the client, and the amount involved and the results obtained. While the amount of time expended is certainly a factor, it is not the only factor to be considered.

Moreover, at the time of the decedent's death, Hamilton County Probate Court Local Rule 40.1 (C)[1] also provided a guide for the legal fees to be charged by an attorney for services rendered in the complete administration of an estate. The guideline fee would closely approximate the following:

$81,913.86.	X	4.5%	=	$ 3,686.13
	total		=	$ 3,686.13

While this court's guidelines have never been intended as a schedule of minimum or maximum fees to be charged, the guideline fee represents a presumptively reasonable fee for the complete administration of an estate. As the Ohio Supreme Court has held, an attorney requesting a fee for legal services has the obligation to introduce sufficient evidence of the services performed and of the reasonable value of such services. *In re Estate of Verbeck* (1962), 173 Ohio St. 557, 559. Those applicants who seek a fee in excess of the guideline have an increased burden to demonstrate why the greater fee should be granted. In this case, George W. Bunyan, Jr. has exceeded that burden and has demonstrated they he is entitled to the requested fee.

Disciplinary Rule 2-106 requires an examination of several factors in determining a reasonable attorney fee. As stated above, those factors include the time and labor required, the novelty and difficulty of the questions involved, the fee customarily charged in the locality

[1] While this court's local rules are substantially the same, they have all been renumbered, effective September, 1998, in harmony with the Ohio Rules of Superintendence.

for similar legal services, the nature and length of the professional relationship with the client, and the amount involved and the results obtained. While the amount of time expended is certainly a factor, it is not the only factor to be considered.

Eddie Thompson, Jr.'s unsuccessful efforts for a judicial body to recognize his varied and numerous claims of wrongdoing in connection with the administration of this estate has hindered and delayed the estate's administration. As early as April of 1992, Mr. Bishop had predicted that Eddie Thompson, Jr. and his sibling's actions would constitute a burden upon the estate in the form of attorney's and administrator's fees that would otherwise be unnecessary. Time ha s proven Mr. Bishop's prediction to be true.

This estate has been filled with litigation and strife, as even a cursory examination of its seven-year docket will demonstrate. The original administrator's and the successor administrator's actions have been challenged by a multitude of unsuccessful theories. Mr. Bunyan was obligated to defend at least two motions for the removal of the fiduciary, exceptions to the inventory, motions for reconsideration, objections to various decisions of magistrates as well as several appeals. Mr. Bunyan has clearly demonstrated the reasonableness of the fees he seeks.

With respect to Mr. Bishop's application, he has also justified, in part, the reasonableness of his requested fee. Mr. Bishop adequately documented the time he spent and services rendered to Alberta Thompson. However, the Court is obliged to separate the services Mr. Bishop provided to Mrs. Thompson as fiduciary of this estate from the services provided to Mrs. Thompson or her estate individually. The capacity in which Mr. Bishop rendered his services is an important distinction.

Alberta Thompson served as fiduciary from January 29, 1992

until she was discharged, after her final account was approved. The First District Court of Appeals upheld this court's approval of Alberta Thompson's final account on August 26, 1994. Mr. Bishop's timesheets indicate he spent 239 hours representing Alberta Thompson as fiduciary up to that point. Accordingly, Mr. Bishop shall be paid $29,875.00, plus costs of $265.00. Mr. Bishop may seek payment from the remaining 47.35 hours from Alberta Thompson individually or from her estate.

Accordingly, the Court authorizes the payment of attorney fees of $28,293.75 to George W. Bunyan, Jr. and $29,875.00 plus costs of $265.00 to Alvertis W. Bishop, Jr.

SO ORDERED. S/WAYNE F. WILKE, JUDGE

cc: George W. Bunyan, Jr.
Alvertis W. Bishop, Jr.
Eddie Thompson, Jr.

A COPY OF THIS ENTRY WAS MAILED TO THE PARTIES LISTED AT LEFT ON 4-14-99

Ex. J

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
DEC 29 1999
IMAGE 2

IN RE: ESTATE OF EDDIE JAMES THOMPSON, SR., deceased.

APPEAL NO. C-990341
TRIAL NO. 920479
JUDGMENT ENTRY.

This appeal, considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, is not controlling authority except as provided in S.Ct.R.Rep.Op. 2(G)(1).

Appellant, Eddie James Thompson, Jr., appeals the judgment of the Hamilton County Probate Court awarding fees to the attorneys for the estate of Eddie James Thompson, Sr. For the following reasons, we affirm the judgment of the probate court.

Eddie J. Thompson, Sr., died intestate in 1991. Thompson, Jr., has filed four previous appeals, each captioned *In Re: Estate of Eddie James Thompson, Sr.*,[1] challenging the manner in which the estate had been administered. This court affirmed the judgments of the probate court in each instance.[2]

On April 14, 1999, the probate court journalized an entry allowing fees to be paid to the attorneys for the estate. Thompson, Jr., appeals that judgment.

In his first and second assignments of error, Thompson, Jr., contends that the probate court erred in failing to void the appointment of the surviving spouse as administrator of the estate and in awarding attorney fees following the allegedly improper appointment. This court has previously considered the contested appointment, and we have rejected the arguments of Thompson, Jr., concerning this issue.[3] This issue, therefore, is *res judicata*, and the first and second assignments of error are overruled.

---

[1] (Aug. 26, 1994), Hamilton App. No. C-930606, unreported; (Aug. 26, 1994), Hamilton App. No. C-930607, unreported; (Oct. 13, 1995), Hamilton App. No. C-941022, unreported; (Jan. 12, 1966), Hamilton App. No. C-950343, unreported.

[2] See *id.*

[3] See *In Re: Estate of Eddie James Thompson, Sr.* (Aug. 26, 1994), Hamilton App. No. C-930607, unreported.

In the third assignment of error, Thompson, Jr., argues that the trial court erred in failing to accord full faith and credit to a judgment from the Commonwealth of Kentucky concerning the rights of the surviving spouse to share in the estate. Though phrased differently, this assignment of error essentially contests the probate court's findings that the decedent was domiciled in Ohio and that the estate was required to be administered in Ohio, issues that have been raised in previous appeals. Because we have previously held that the probate court was correct in its determination of domicile and jurisdiction,[4] those issues are *res judicata*, and we overrule the third assignment of error.

In the fourth and final assignment of error, Thompson, Jr., argues that the probate court erred in approving an inventory of the estate that did not properly reflect the estate's assets. Once again, we have previously rejected this argument,[5] and we accordingly overrule the fourth assignment of error.

Therefore, the judgment of the probate court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and SHANNON, JJ.
RAYMOND E. SHANNON, retired, of the First Appellate District, sitting by assignment.
To the Clerk:

Enter upon the Journal of the Court on **DEC 29 1999**

---

[4] See *In Re: Estate of Eddie James Thompson, Sr.* (Jan, 12, 1996), Hamilton App. No. C-950343, unreported.

[5] See *In Re: Estate of Eddie James Thompson, Sr.*, (Oct. 13, 1995), Hamilton App. No. C-941022, unreported.

per order of the Court _____

S/Hildebrandt
Acting Presiding Judge

ENTERED
DEC 29 1999
IMAGE 4

Ex. K IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ESTATE OF EDDIE J. THOMPSON, SR. APPEAL NO. C-990341

ENTRY OVERRULING MOTION TO TRANSFER TO REGULAR CALENDAR

This cause came on to be considered upon the PRO SE motion of the appellant filed herein to transfer the within appeal from the accelerated calendar to the regular calendar, and

The Court, upon consideration thereof, finds that the motion is not well taken and is overruled.

To The Clerk:

Enter upon the Journal of the Court on 6/18/99 **per order of the Court.**

By:_____ **(Copies sent to all counsel)**

S/ Presiding Judge

Ex. L

KENTON DISTRICT COURT
FIRST DIVISION
CASE NO. 92-P-00269

IN RE: THE ESTATE OF
EDDIE J. THOMPSON, SR.,
Deceased

NOTICE OF HEARING

The petition of Alberta Thompson to be appointed administratrix of the estate of Eddie J. Thompson, Sr., will be heard on the 8th of May, 1992 at 1:30 p.m. in chambers.

S/FRANK TRUSTY, II, Judge

FT/jrm
cc: Eddie Thompson, Jr. Rudy Thompson
James Thompson Alvertis Bishop, Esq. File

Ex. M

COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO

ENTERED
MAY 15 1992
IMAGE No. 110

In Re:
ESTATE OF EDDIE JAMES
THOMPSON, SR.

CASE NO, 920479
(Judge Wayne F. Wilke)

ENTRY

The within cause came before the Court this 13 day of May, 1992, on the written motion of Delores Spicer, pro se, to remove the administrator. The Administrator/Respondent, Alberta Thompson, through counsel, has filed a written memorandum contra. The cause had originally been set for hearing on April 13, 1992, at which time it was continued to this date in order to afford Movant the opportunity to obtain counsel.

Movant, Delores Spicer, appeared pro se. Respondent, Alberta B. Thompson, Administrator, appeared with counsel, Alvertis W. Bishop, Jr.. The parties presented testimony and argument in support of their respective positions. The Respondent proffered three exhibits, which were received into evidence without objection.

The court finds from the pleadings, testimony and exhibits that it has proper jurisdiction over the parties and the subject matter, and that the decedent was residing at 2238 St. James Avenue, Cincinnati, Hamilton County, Ohio 45206 at the time of his demise. The Court further finds that the Administrator/Respondent, Alberta B. Thompson, is the surviving spouse of the decedent.

ENTERED
Wayne F. Wilke

The Court hereby takes the remaining issues raised by the Motion to Remove Administrator under advisement.

The Court further orders that the inventory of the estate shall be filed by the Administrator/Respondent on or before May 20, 1992.

SO ORDERED. S/Wayne F. Wilke, Judge

Copies To:

Mrs. Delores Spicer
232 Setchell
Cincinnati, Ohio 45226

Alvertis W. Bishop, Jr.
Attorney for Administrator
432 Walnut, #1400
Cincinnati, Ohio 45202

ENTERED

S/A.W. Bishop, Jr.
for Respondent

...Certified... true and correct copy...Witness
By S/Robin W. Rei, Deputy Clerk

Ex. N

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
Society Bank Center Rm. 201
36 East 7th Street
Cincinnati, OH. 45202
(513) 684-3188

May 22, 1992

Hamilton County Probate Court

Refer to: A 432-03-4851
Eddie J. Thompson
132 W. 14th St.
Covington KY 41011
Deceased

The Attached 2 documents are from our records. These records show that Eddie J. Thompson, who died on 12-19-91, was receiving a retirement check in the amount of $541.78 after medicare deductions of $38.20.

If you have any questions regarding Mr. Thompson's benefits

please feel free to contact me.

Very truly yours,
S/Gary L. Stuart
For Jeffrey F. Szabo
District Manager

Ex. O

August 24, 1993

TO: Honorable Frank Trusty III, Judge
Kenton District Court, Probate Division
Case No. 92-P-269

Honorable Wayne F. Wilke, Judge
Court of Common Pleas, Probate Division
Hamilton County
Case No. 920479

IN RE: Eddie James Thompson
Sr., Deceased
SSN 432-03-4851
1125 Russell Street
Covington, KY 41011

In a letter dated May 26, 1992, this office informed the Hamilton County Probate Court that records at Social Security reveal Eddie James Thompson, above named decedent's legal residence was 1125 Russell Street, Covington, Kentucky. Decedent's check was mail to Provident Bank, Cincinnati, Ohio, for direct deposit.

Per our records - Kentucky was decedent's domicile. See Social Security, HHS Subpart D, Section 404.302. 20 CFR Ch. III (4-1-92

Edition) P. 79 Definitions - Permanent home.

Very truly yours
S/Marc Donnelly
Social Security Administration
228 Grandview Dr.
Ft. Mitchell, KY 41017

Ex. P

Marriage License

COMMONWEALTH OF KENTUCKY

To Any Person Licensed to Celebrate Marriages:
You are hereby authorized to join together in the state of matrimony, according to the laws of the Commonwealth of Kentucky

Bride's Full Name Alberta Bessie Jack
Residence 2238 St. James Ave. Cinti. Ohio 45206
Groom's Full Name E.J. Thompson
Residence 132 W. 14th St. Covington, Ky 41011

	Bride	Groom
Date of Birth/Age	07-14-06 81	12-01-08 78
Place of Birth	Mississippi	Mississippi
Race	black	black
Condition (single, widowed, or divorced)	widowed	widowed
Number of Previous Marriages	two	two
Full Name of Father	Peter Fairconatue	James Thompson
Full Maiden Name of Mother	Rachel Willis	Nannie Higgins
Occupation	housewife	retired

Are you related? No If yes, what is relationship? _____
We hereby certify the above information is true to the best of our knowledge.

S/Alberta B. Jack — Bride's Signature
S/E.J. Thompson — Groom's Signature

Issued under my authority, as Clerk of Kenton

County, Kentucky, this 25th day of November, 1987
A. T. Wood, Clerk S/, Deputy Clerk

Note: License void 30 days after date issued. Must be returned, completed, toCounty Clerk, within one month. Use only black ball point permanent ink pen or typewriter.

Certificate of Time and Place of Marriage

I, S/Thomas Hall a Justice of the Peace
of the 2nd District church, religious order or civil authority of that name, do certify that on the 25th day of November, 1987 at Covington Kentucky, under authority of the above license, I United in Marriage E. J. Thompson and Alberta Bessie Jack the person named and described therein, in the presence of S/ George C. Wright and S/ Paige A. Taylor.
I, qualified and gave bond, according to KRS Chapter 402, authorizing me to celebrate the rites of Marriage in the County of Kenton, State of Kentucky
Given under my hand, this 25th day of November, 1987

S/ Thomas Hall
Person Performing Ceremony Sign Here

Note: KRS Chapter 402.220 requires of this license and completed certificate to the Clerk of the county in which it was issued within one (1) month. Persons failing to do so "shall be fined $50.00" (KRS 402.990.13).

Recorded this 1 day of December, *1987*,
in Marriage Book Number 665, *Page* 80
S/ A.T. Wood, *Clerk, By* S/ CCust, *Deputy Clerk*

Ex. Q

BELL & BISHOP CO., L.P.A.
ATTORNEY AND COUNSELORS AT LAW
1400 TRI-STATE BLDG.
432 WALNUT STREET
CINCINNATI, OHIO 43202

TELEPHONE (513) 241-BELL

WILLIAM D. BELL, SR.*
*ALSO ADMITTED TO PRACTICE IN ILLINOIS
ALVERTIS W. BISHOP, JR.**
**ALSO ADMITTED TO PRACTICE IN KENTUCKY AND WEST VIRGINIA

OF COUNSEL
JOHN H. BURLEW

June 18, 1992

Hon. Wayne F. Wilke
Judge & Ex-Officio Clerk
Hamilton County Probate Court
500 Hamilton County Court House
1000 Main Street
Cincinnati, Ohio 45202

RECEIVED
WAYNE F. WILKE
JUN 19 1992
TO_____ DATE____
RESULTS_____

Re: Estate of Eddie James Thompson, Sr.
Case #920479
Nomination of Successor Administrator

Dear Judge Wilke:

I hereby submit for consideration as successor administrator: Judge George W. Bunyan, Jr., 409-411 American Building, 30 East Central Parkway, Cincinnati, Ohio 45202, (513) 579-0555

I have the permission of Judge Bunyan to submit his name for consideration. I have discussed this nomination with Alberta

Thompson, who has indicated that she has no objection. I attempted to broach the subject with Mrs. Spicer on Friday, June 12, 1992 at the Kenton County Court House, however, she departed the Kenton County Court House without discussing the issue.

I am therefore informing her of this nomination by way of copy of this letter.

Thank you for your consideration.

Sincerely,
S/ Alvertis W. Bishop

cc: Mrs. Delores Spicer
Judge George W. Bunyan, Jr.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been served to Eddie J. Thompson, Jr., by hand, on this 1st Day of August 1992.

S/ Alvertis W. Bishop, Jr.

Ex. R

COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO

FILED
JUN19 1992
IMAGE No 114

In Re:
ESTATE OF EDDIE JAMES THOMPSON, SR.

CASE NO. 920479
(Judge Wayne F. Wilke)

ENTRY

The within cause came before the Court on the 13 day of May,

1992, on the written motion of Delores Spicer, pro se, to remove the administrator. The Administrator/Respondent, Alberta Thompson, through counsel, had filed a written memorandum contra.

Movant, Delores Spicer, appeared pro se. Respondent, Alberta B. Thompson, Administrator, appeared with counsel, Alvertis W. Bishop, Jr.. Testimony and exhibits were adduced at the hearing. By previous entry of May 15, 1992, the Court made certain specific findings which shall remain in force as though fully rewritten herein. The Court took the issue of removal under advisement.

The Court, having observed that the Administratrix is of advanced years, and having concluded that the Administratrix is insufficiently familiar with the assets of the estate of the decedent, finds that removal is in the best interests of the estate. The Court further concludes that, due to the strenuous differences of opinion within the family, it will be in the best interests of all concerned if a person who is totally disinterested in the distribution of the estate serve as administrator. Therefore, no person who is a member of the family or has a potential claim as an heir at law will be considered as the replacement administrator.

ENTERED
Wayne F. Wilke

The parties are hereby directed to attempt to agree as to the replacement administrator. Should an agreement not be reached, the Court will appointment the person it deems best suited.

SO ORDERED.

S/ Wayne F. Wilke, Judge

Copies To:

Mrs. Delores Spicer
232 Setchell
Cincinnati, Ohio 45226

SCRIVENER:
S/ Alvertis W. Bishop, Jr.

ENTERED
Wayne F. Wilke

Alvertis W. Bishop, Jr.
Attorney for Administrator
432 Walnut, #1400
Cincinnati, Ohio 45202

...Certified...true and correct copy...Witness
By S/Patricia Miller, Deputy Clerk

Ex. S

COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO

FILED
JUN 24 1992
WAYNE F. WILKE
Judge & Ex-Officio Clerk
By_____
Deputy Clerk

In Re:

CASE NO. 920479

ESTATE OF EDDIE JAMES THOMPSON, SR.

(Judge Wayne F. Wilke)

Report of Pretrial Conference and Scheduling Order

This cause came on for an informal pretrial conference on Exceptions to Inventory filed by Eddie Thompson, Jr., pro se. Present for said conference were Eddie Thompson, Jr., James Thompson, Dorian Thompson, Rudy Thompson, Edward Thompson, Jimmy Thompson, and Alvertis Bishop, Jr.

A review of the Exceptions was undertaken to ascertain whether the parties were prepared for an evidentiary hearing. Based upon the statements of Eddie Thompson, Jr., and Alvertis Bishop, Jr., the

following exceptions shall be excluded:

(1), (3), and the second (4) (on page 2) constitute part of the Exceptor's statement of facts and are not properly exceptions to the inventory.
(2), (4) (d), and (4) (j) deal with the decedent's real estate interests located outside the State of Ohio, over which this Court has no jurisdiction (R.C. 2115.02).

Those exceptions not excluded above shall be heard by the Court at an evidentiary hearing.

DISCOVERY

Exceptor has requested that Mrs. Alberta Thompson, the removed fiduciary, make available any and all bank accounts and Series E U.S. Savings Bond for inspection by the Exceptor. Said information shall be disclosed on or before July 6, 1992.

All discovery in this matter shall be completed on or before August 11, 1992.

MEMORANDA

Exceptions (6), (7) and (8) raise issues regarding notice. Exceptor and counsel for the estate shall each file a Memorandum of Law regarding these issues on or before August 11, 1992.

HEARING ON EXCEPTIONS

An evidentiary on the Exceptions to Inventory shall be heard on August 25, 1992, at 1:30 P.M. in Room 500, Hamilton County Probate

Court, 1000 Main Street, Cincinnati, Ohio.

OTHER MATTERS

In accordance with the Court's prior order in this case, a Successor Administrator is to be appointed. If an agreement among the parties hereto is not reached on or before July 6, 1992, then the Court shall appoint a suitable and disinterested person as Successor Administrator. The appointment of a Successor Administrator is therefore scheduled for hearing on July 6, 1992 at 3:30 P.M. in Room 500, Hamilton County Probate Court, 1000 Main Street, Cincinnati, Ohio.

S/ Mark E. Combs, Referee

Pursuant to Civil Rule 53 (E) (5), the Court hereby adopts the Report of Pretrial Conference and Scheduling Order herein.

Wayne F. Wilke, Judge

cc: Mr. Eddie Thompson, Jr.
P.O. Box 1221
Covington, Kentucky 41011

Mr. Alvertis W. Bishop, Jr
1400 Tri-State Building
432 Walnut Street
Cincinnati, Oh 45202

Mrs. Delores Spicer
232 Setchell Street
Cincinnati, Ohio 45226

Ex. T

COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO

ENTERED
JUL 13 1992
IMAGE No 77

In Re: CASE NO. 920479
ESTATE OF EDDIE JAMES THOMPSON, SR., Deceased.

ENTRY APPOINTING SUCCESSOR ADMINISTRATOR

The Court, having considered the nominations and the arguments in open Court, does hereby appoint:

George W. Bunyan, Jr., Esq.
409 American Building
30 East Central Parkway
Cincinnati, Ohio 45202

as the administrator of the above-captioned estate, to succeed Mrs. Alberta B. Thompson in that capacity.

Letters of Authority shall be issued upon the posting of surety satisfactory to the Court.

SO ORDERED.

Wayne F. Wilke
Judge and Ex-Officio Clerk

cc: George W. Bunyan, Jr., Esq.
30 E. Central Pkwy, Suite 409
Cincinnati, Ohio 45202

Mrs. Delores Spicer
232 Setchell Avenue
Cincinnati, Ohio 45227

Alvertis W. Bishop, Jr., Esq.
432 Walnut Street, Suite 1400
Cincinnati, Ohio 45202

Prepared by:
S/Alvertis W. Bishop, Jr.

ENTERED
Wayne F. Wilke

Ex. U IN THE KENTON CIRCUIT COURT
COMMONWEALTH OF KENTUCKY
IV Division
Case No: 92-CI-1399

FILED
KENTON CIRCUIT/DISTRICT COURT

JUN - 7 1994
M.A. WOLTENBERG, CLERK

ALBERTA B. THOMPSON Plaintiff

v.

EDDIE J. THOMPSON, JR., et al., Defendants

AFFIDAVIT OF ALVERTIS W. BISHOP, JR.

Now comes the affiant, Alvertis W. Bishop, Jr., and being first duly cautioned and sworn, he does hereby state as follows:

1) My name is Alvertis W. Bishop, Jr., and my professional address is 30 East Central Parkway, Suite 1300, Cincinnati, Ohio 45202. I am duly licensed to practice law in the Commonwealth of Kentucky.

2) I, along with Hon. Gregory A. Gabbard, represent Alberta Thompson, who is the Plaintiff herein. Plaintiff Alberta Thompson is the surviving spouse of Eddie J. Thompson, Sr., deceased. Rev. Thompson died seized of several parcels of realty within Kenton County, Kentucky.

3) As counsel for the Plaintiff, I fully intend to pursue the above styled case to its conclusion. The lawsuit is made necessary by a dispute between the parties as to their respective rights in the realty of the decedent.

4) The above styled case should not be dismissed for lack of prosecution. The original trial judge disqualified himself by order

dated December 9, 1992, and, prior to receipt of notice from this Court to show cause, no noticed was received by the undersigned that the case had returned to the active docket.

5) Further, Affiant sayeth naught.

S/ Alvertis W. Bishop, Jr.

COUNTY OF HAMILTON)
) SS
STATE OF OHIO)

Sworn to and Subscribed in my presence by Alvertis W. Bishop, Jr., this 7 day of June, 1994.

S/ A. NOEL CALIMAN ,
Attorney at Law
Notary Seal State of Ohio

COMMONWEALTH OF KENTUCKY

Ex. V KENTON CIRCUIT COURT FILED
FOURTH DIVISION AUG 29 1997
NUMBER 92-CI-01399 S/C. Casey ,
Deputy Clerk

ALBERTA B. THOMPSON PETITIONER
VS. ORDER DISMISSING
EDDIE THOMPSON., ET AL. RESPONDENTS

This matter is before the Court on Respondent Eddie Thompson Jr.'s Motion for summary Judgment against Petitioner Alberta B. Thompson. Counsel for Petitioner filed a petition for dower interest in real property in Kentucky owned by decedent Eddie Thompson Sr. This matter was filed approximately five years ago on or about August 13, 1992. This matter has been before this Court twice on a CR 77.02(2) Order. A review of the record reveals that counsel for

Petitioner has (1) failed to show cause why Petitioner's claims should not be dismissed with prejudice, (2) failed to file an affidavit showing why Summary Judgment should not be granted for Respondent or why this matter should not be dismissed as to other parties. Wherefore,

IT IS THE ORDER OF THIS COURT that the claims of Petitioner, Alberta B. Thompson, be dismissed at the cost of Petitioner. This is a final, appealable order, and there is no just cause for delay.

S/ Patricia M. Summe, Judge

Hon. Alvertis W. Bishop Jr., 432 Walnut St Ste 1400, Cinti, Oh 45202

CERTIFICATION

I, MARY ANN WOLTENBERG, CLERK OF THE KENTON CIRCUIT, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FOREGOING, ORDER OF DISMISSING HAS BEEN MAILED TO: HON. ALVERTIS W. BISHOP, JR., 432 WALNUT ST., SUITE 1400, CINCINNATI, OH 45202; HON. GREGORY GABBARD, P.O. BOX 15196, COVINGTON, KY 41015; HON. WM. DEUPREE, JR., MASTER COMM., COURTHOUSE, COVINGTON, KY 41011; MR. EDDIE THOMPSON, JR., P.O. BOX 121221, COVINGTON, KY 41012; HON. ARNOLD SIMPSON, AND HON. GARRY EDMONDSON, 28 W. FIFTH ST., COVINGTON, KY 41011; MR. JAMES THOMPSON, 1417 RUSSELL ST., COVINGTON, KY 41011; MR. WALTER THOMPSON, JR., 315 BUSH ST., COVINGTON, KY 41011; MS. DELORES SPICER, 232 SETCHELL, CINCINNATI, OH 45226; MS. DEBORAH ALEXANDER, MR. JIMMY THOMPSON, MS. DARLEEN THOMPSON, EDWARD THOMPSON, JR., MS. MARIE THOMPSON, MR. TERRY THOMPSON, 6701 BUCKINGHAM,

CINCINNATI, OH 45227; MR. RUDY THOMPSON, 1403 RUSSELL ST., COVINGTON, KY 41011; THIS 27TH DAY OF AUGUST, 1997.

MARY ANN WOLTENBERG, CLERK
BY: S/ C. Casey D.C.

Ex. W

COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO

FILED
JUN 11 1999
WAYNE F. WILKE
JUDGE & EX-OFFICIO CLERK
BY _____
DEPUTY CLERK

GEORGE W. BUNYAN, JR.
ADMINISTRATOR, D.B.N. OF THE
ESTATE OF EDDIE JAMES THOMPSON,
SR., DECEASED
PLAINTIFF

CASE NO. 92167

vs.

EDDIE JAMES THOMPSON, JR.,
ET AL
DEFENDANTS

ENTRY DISMISSING THE SUITE TO DETERMINE HEIRSHIP

This cause came on to be heard on the application of George W. Bunyan, Jr., Administrator D.B.N. of the Estate of Eddie James

Thompson, Sr., Deceased, for an order dismissing the within cause.

The court finds that George W. Bunyan, Jr. is the duly appointed Successor Administrator D.B.N. of the Estate of Eddie James Thompson, Sr., Deceased and that the prior administratrix was removed from the case and is now deceased.

The court further finds that since the filing of the amended Form 1.0, listing the surviving spouse and all known next of kin of the decedent, continuation of this action has become unnecessary and the same should be dismissed.

NOW THEREFORE, it is hereby ordered that the within cause of action be and hereby is dismissed at plaintiff's costs.

Unsigned/MAGISTRATE

S/ GEORGE W. BUNYAN, JR.
REG. NO. 0033156, ATTORNEY FOR PLAINTIFF